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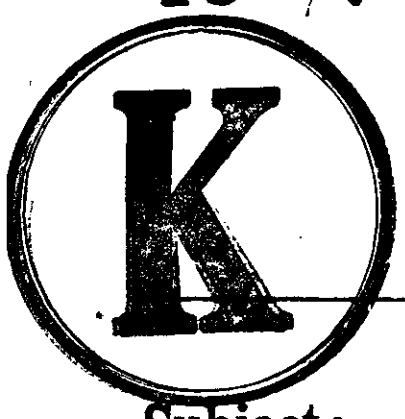

Legal DEPARTMENT

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Subject:—

Opinions regarding Torts

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Office of the [illegible] R.L.A.

The term " act of state" is used in different senses in different contexts. In the first place it is used in the sense of an act or transaction which is not justiciable in the ordinary courts e.g. declaration of war, treaty of peace, annexation or seizure of territory, injury done by or with the authority of state to a foreign subject as in Buron v. Denman (1848, 2 Ex 167). To the same category belong acts of sovereignty done by foreign sovereigns, because a British court hasno jurisdiction to give relief for injurky resulting therefrom. Secondly, the term is used also to refer to acts done by Government with reference to its own subjects in the exercise of executive discretion under common law or statute e.g. dismissal of an officer, deportation of a political offender, declaration of martial law under a riot or rebellion, the disposition of the armed forces of the Crown in time of peace. In these cases courts of lawhave jurisdiction to enquire whether the wrong complained of was authorised by the common law or statutory power under the colour of which it was done. They therefore differ from acts of state of the former descri tion which are wholly beyond the cognisance of municipal courts. (Iyer's Law of Torts, 3rd Edition, Pages 527, 528) A suit lies against Government for wrongs done by its servants in the transactions which any private person could engage in and which the East India Company as a trading company engaged in; e.g. a railway, dockyard, factory. This rule was laid down in P.& O. Steam Navigation Co. v. Secretary of State for India in Council(5 Bom. H.C. Ap x. 1)

A claim against Government for damages for an act of an officer purporting to be done in the course of his official duties,- It would lie only if Government had expressly authorised or ratified the wrongful act. In the absence of such express authority, the act would be considered to have been done in the exercise of the

authority or discretion vested in him by law or statute and not in pursuance of any implied authority of Government. (See Ross v. Secretary of Statem for India in Council 137 Mad. 55).

In the light of the aforesaid principles each case will have to be considered with reference to its facts.

sd/- D.V.Vyas.

Remembrancer of Legal Affairs.

Madhav Raokadam.

8/5

C/4.

Office of the R.L.A.

Mr. Bhave who had the charge of Government money was primarily responsible for its safe custody. It was clearly his duty to keep the cash in a safe place under lock and key, and, if it was left in the godown, to see that it was properly secured against burglary. A grain purchase ~~godown~~ godown must of necessity be frequented by numerous persons during the day and it is not difficult to imagine that the theft was committed by some one who had the foreknowledge of the place where the cash was left. Mr. Bhave had a little over four thousand rupees with him on 28-1-1946. He put half of this in a box which he merely tied with a piece of cloth. He put this box and another bundle of 2 rupee currency notes of Rs. 2000 side by side in an open niche in the godown, from where it was liable to be ~~easily~~ discovered with little difficulty. The fact that one of the windows on the left on the rear side of the godown was found unlatched from the inside shows that Mr. Bhave had not satisfied himself ~~as~~ that the ~~same~~ godown was properly secured. It is difficult to conceive of a more flagrant instance of negligence and carelessness. As a responsible officer he was ~~not~~ expected to be more vigilant and to make better arrangements for the safety of Government money entrusted to his care. Leaving the cash in an open niche and failure to see that the godown was properly secured against burglary would seem to be prima facie proff of negligence for which Mr. Bhave can beheld liable. It is of course not possible to state at this stage what view the court would hold. If Mr. Bhave is solvent to the extent of satisfying the decree, a suit may be filed.

sd/- P.M.L.
10/10

Remembrancer of Legal Affairs.

U. R. to C.S. D., No. 6076, dated the 11th June 1947.

L.D. R.I. No. 6184/22/5/47.

Submitted.

Please see E. & I. Deptt. note dated 20/5/47 at pp. 135-37 ante and Jt. Secy.'s note dated the 20/5/47 under that at pp. 137-133. It is desirable to recitate the facts briefly. The Gujarat Ginning and Manufacturing Co. Abad's Mill at Ahmedabad had remained idle for a considerable time and as the Co. was unable to re-start the mill, they contracted to sell the machinery to one Mr. C. V. Krishnamurthi of Vanjinad Textiles Ltd. who wanted to establish an mill in the Travancore State. On the 27th Jan. 1947 Mr. Krishnamurthi made an applicationsx to the Textile Comnr. requesting him to grant him permission to acquire the saimd mill and the latter noticing that the machinery will be removed out of the Province invited comments of the Govt. in the matter before granting the permission (vide p. 1 ante). This Govt. thought it ~~xxxxxxxxxxx~~ undesirable that the Province should be deprived of its textile production and decided to find out a purchaser who would be willing to buy the machinery and keep it in the Province of Bombay. Accordingly an advertisement was inserted in the Times of India of the 7th April 1947. The draft of the Advt. is at p. 35 ante. Before inserting it in the paper the draft was shown to A.L.A. who in his opinion No. 3836, dated the 25th March 1947 held that it was free from any ~~xxxx~~ legal objection (vide p. 53 ante). As the Govt. was finding out ~~xxx~~ a buyer it requested that Textile Comnr. to withold permission till 5-th May 1947 to which the Comnr. agreed(p. 107) The Advertisement failed to bring a prospective buyer but instead two letter of protest were received. One was from Mr. Krishnamurthi, the person who has contracted to buy the machinery and the other was from the Mills. Mr. Krishnamurthi, in his letter at p. 111 ante, intimated that the Mills had

contracted to sell him the machinery and until his agreement was determined, disposal of the machinery as contemplated by the Provincial Govt. would be illegal. In their letter, the Gujrat Ginning and Manufacturing Co. intimated the Dir. of Industries that his action in advertising the machinery for sale without consulting them was indirect violation of and highly prejudicial to their rights and onligations in respect of the machinery and that they shall be holding him responsible for alladverse conseqeunces that may follow from his action. (p. 115 ante). Sale to Mr. Krishnamurthi, it appears, was to be completed according to their agreement before the 30th Arpil 1947 and as it would not be completed before that date on acccount of the interference of the Provincial Govt. Mr. K. gave a notice to the Mills that he is cancelling the agreement. (vide p. 133 ante) The Gujrat Ginning and Mfg. Co. have now written to the Dir. of Industries stating that they will hold him responsible for all the adverse consequences that have followed from his actions (vide O. 131 ante). The Dir. of Industires desires to know what reply he should give the Mills and the papers have been referred to R.L.A. with a request to supply E. & I. D. a draft reply.

Two questions fall for consideration of the R.L.A. in this case. They are:-

(1) Whether Govt. would be liable for damages for the breach; and

(2) What reply should be given.

Madhav Raokdam.
8/5

Office of the R.L.A.

Forwarded with compliments to Messrs. Little and Co. Solicitors to Government, Bombay.

The only cause of action against Government, so far as I can see, would be in tort viz. interference with contract. But interference with contract is not tortious if it be justifiable. And I think Government can successfully plead justification. The means employed are by no means unlawful.

In view of the position stated above, the Solicitors to Government are requested to draft a suitable reply to the Gujrat Ginning and Manufacturing Company's letter at page 131 ante, as in the event of an suit, they will have to be in charge of the case.

The case may be treated as very urgent.

sd/- P.J.L.
11/6
Remembrancer of Legal Affairs,

U. O. to Messrs. Little and Co. Solicitors to Government, Bombay, No. 6134, dated the 13th June 1947.

Madhav Raoji.
6/6/50.
c/1.

Officers of the B.L.A.

Re. defamation of Bombay Gur Merchants Association.

I have been unable to understand how Government can avoid the responsibility for the wrong statement issued by its officer.

It is admitted that an un-official note was sent out to the Associated Press of India and the press agency circulated the un-official note to various newspapers one of which is the Times of India which published the un-official note. It is immaterial whether the note issued is official or un-official so long as it emanated from Government and it may not be possible for Government to avoid the responsibility on the ground that it was the press agency that circulated the note. It appears that Government as well as the editor and the publisher of the Times of India would be equally liable provided the note is held to be defamatory. It may be argued against Government that they had expressly authorised or ratified the act of publication by its officer purporting to act in the course of his official duties. Admittedly it was not the Bombay Suburban Gur Merchants Association, Andheri which imported gur of inferior quality and sold it as gur of superior quality. To make such an imputation to a company or association would tend to harm its reputation. Consequently the imputation made in the present case against the Bombay Suburban Gur Merchants Association, Andheri is defamatory and action both civil and criminal would be legally possible. The point tried to be made out by the Additional Director of Civil Supplies (Procurement) about the identity of the Association

does not appear to have any substance. In the circumstance the proper course for Government would be to issue another un-official note to the Associated Press of India explaining the correct factual position.

sd/- P.M.L.

Remembrancer of Legal Affairs.

U. ~~No~~ R. to C.S.D. No. 11009, dated the 18th November 1947.

Madhav Raokadam.

8/5

c/4